

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JOEY KIMBROUGH,)
Plaintiff,)
v.)
AMERICAN EXPRESS COMPANY, aka)
AMERICAN EXPRESS NATIONAL BANK,)
Defendant.)
No. 1:22-cv-01993-TWP-MJD

ORDER

This matter is before the Court on Plaintiff's Notice of Waiver of Arbitration [Dkt. 104.]

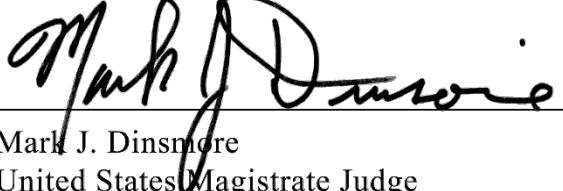
For the reasons set forth below, the motion is **DENIED**.

Joey Kimbrough, Pro Se Plaintiff ("Plaintiff") argues in the instant motion that "Defendant's active participation in litigation, including discovery and case management, demonstrates an intention to resolve the dispute through the judicial process, thereby waiving any right to arbitration." [Dkt. 104 at 5.] However, the Court has already granted Defendant's motion to compel. See [Dkt. 49]. Plaintiff's argument that Defendant waived its right to arbitration by participating in this litigation prior to filing a motion to compel arbitration could and should have been raised by Plaintiff in response to the motion to compel; by failing to raise it then, Plaintiff forfeited the argument. The Seventh Circuit has made clear that when a party fails to raise an argument in its original motion or petition, that argument is forfeited and will not be

reviewed without exceptional circumstances, which are not present here. *Love v. Vanihel*, 73 F.4th 439, 449 (7th Cir. 2023).¹ Accordingly, Plaintiff's motion is **DENIED**.

SO ORDERED.

Dated: 1 AUG 2024



Mark J. Dinsmore
United States Magistrate Judge
Southern District of Indiana

Distribution:
All ECF-registered counsel of record via email and U.S. mail to:

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¹ Plaintiff also alleges fraud, arguing that Defendant's counsel misrepresented their authority to practice law in this jurisdiction. [Dkt. 104 at 6.] This argument is meritless, and like his arbitration argument, has already been addressed by the Court. See [Dkt. 101.]